

REMARKS

Status of the Claims

The present Office Action addresses and rejects claims 14-29. Applicants respectfully request reconsideration in view of the remarks herein.

Claim Rejections Pursuant to 35 U.S.C. § 102(e)

The Examiner continues to reject claims 14-29 pursuant to 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2005/0085813 of Spitler et al. ("Spitler"), arguing that Spitler discloses the claimed invention. Applicants respectfully disagree.

Claims 14-26

Independent claim 14 recites a method for implanting a spinal fixation element into at least one spinal anchor disposed within a vertebra in a patient's spinal column. The method includes introducing a spinal fixation element having a feature formed adjacent to a terminal end thereof through a lumen in an access device coupled to a spinal anchor. The access device includes a slot formed in a sidewall adjacent to a distal end thereof and adapted to prevent the feature from passing through any portion thereof. The method also includes manipulating the spinal fixation element to cause the feature to sit within a receiving member of the spinal anchor coupled to the access device, and to cause a remaining portion of the spinal fixation element to extend through the slot.

Spitler fails to teach or even suggest the claimed method because it lacks introducing a spinal fixation element having a feature formed adjacent to a terminal end thereof through a lumen in an access device coupled to a spinal anchor and manipulating the spinal fixation element to cause the feature to sit *within a receiving member of the spinal anchor coupled to the access device*. The Examiner argues that in Spitler, a bulbous end (91) of a spinal fixation element (90) is the feature in claim 14. That is impossible. Claim 14 recites that the spinal fixation element be manipulated to have its feature sit in the spinal anchor coupled to the access device through which it was introduced. The spinal fixation element (90) in Spitler is introduced into an access device (41) attached to a spinal anchor (52), and, as clearly shown in FIGS. 8A and 12B, the bulbous end (91) of the spinal fixation element (90) exits the access device (41) and enters another access device (42). As shown in FIGS. 2C and 5B, it is an opposite end (92) of the spinal fixation element (90), not the bulbous end (91), that sits within the spinal anchor (52).

As shown in FIGS. 2D, 7A, and 8A, the bulbous end (91) is purposely adapted to exit a slot (402) in the access device (41) and enter a slot (402) in another access device (42) to sit in another spinal anchor (62).

Applicants also reiterate their previous argument that Spitler fails to teach a slot that prevents a feature on a spinal fixation element from passing therethrough. In the present Office Action, the Examiner states, "It is noted that the feature on the fixation element is designed to not slide out of the slot from the cannula portion. It is still considered to read on the prior art of record." If Spitler specifically teaches a feature that *is passed* through a slot in a cannula, then Spitler cannot anticipate the claimed invention. The Examiner refers to paragraph 0063 of Spitler, which reads, "proximal end 91 has a ball (or partial ball) shape for capture by slot 402 of cannula 42. End 91 can have any shape, provided such shape is adapted for capture by cannula 42." As shown in FIG. 8A, the cited text is referring to the slot (402) in the cannula (42). This slot has an enlarged proximal end to allow the ball (91) to be *passed* therethrough. The remainder of the slot is smaller in diameter to capture the ball (91). Claim 14 specifically requires that the slot prevent the feature from passing through *any portion thereof*. Since Spitler's ball (91) can pass through the proximal portion of the slot (402) in the cannula (42), Spitler cannot anticipate the claimed invention.

Accordingly, independent claim 14 distinguishes over Spitler and represents allowable subject matter. Claims 15-26 are allowable at least because they depend from an allowable base claim.

Claims 27-29

Independent claim 27 recites a method for implanting a spinal fixation element that includes providing at least two spinal anchors implanted in adjacent vertebrae of a patient's spine and providing an access device having an inner lumen extending between proximal and distal ends. The distal end is adapted to couple to one of the spinal anchors. The access device includes a slot formed in a sidewall thereof adjacent to the distal end. The method also includes providing a spinal fixation element having a first end and a second end with a feature formed thereon. The feature has a width that is greater than a maximum width of the slot to prevent passage thereof through the slot in the sidewall of the access device. The method also includes inserting the spinal fixation element through the lumen in the access device and manipulating the spinal fixation element to cause the feature to be positioned within the

spinal anchor attached to the access device and the first end to extend through the slot, such that the spinal fixation element extends between the spinal anchors.

Spitler fails to teach or even suggest the claimed method because it lacks a feature having a width that is greater than a maximum width of a slot formed in the sidewall of an access device. As explained above, the bulbous end (91) of the spinal fixation element (90) is purposely adapted to pass through the slot (402) in the first access device (41) and to pass through the proximal portion of the slot (402) in the second access device (42). Thus, the bulbous end (91) cannot and does not have a width greater than a *maximum* width of the slot (402) in either cannula. Furthermore, the bulbous end (91) is not even seated in the spinal anchor (52) attached to the access device (41) through which it is introduced, as was also explained above.

Accordingly, independent claim 27 distinguishes over Spitler and represents allowable subject matter. Claims 28-29 are allowable at least because they depend from an allowable base claim.

Conclusion

Applicants submit that all claims are in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

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Respectfully submitted,

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